

Revised 6/11/02
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6/11/02 [7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AG95

Revision of Fee Schedules; Fee Recovery for FY 2002

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 96 percent of its budget authority in fiscal year (FY) 2002, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2002 is approximately \$479.5 million.

EFFECTIVE DATE: (Insert 60 days after publication in the Federal Register).

\$36.0 million shall be excluded from license fee revenues. The total amount to be recovered in fees and other offsetting receipts for FY 2002 is approximately \$479.5 million. ✓

The NRC assesses two types of fees to meet the requirements of OBRA-90, as amended. First, license and inspection fees, established in 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not otherwise recovered through 10 CFR Part 170 fees.

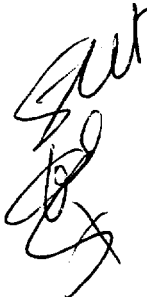
II. Response to Comments

The NRC published the FY 2002 proposed fee rule on March 27, 2002 (67 FR 14818), to solicit public comment on its proposed revisions to 10 CFR Parts 170 and 171. The NRC received 11 comments before the comment period ended on April 26, 2002, and ~~two~~ three additional comments by May ~~13~~ 24, 2002, for a total of ~~13~~ 14 comments that were considered in this fee rulemaking. Many of the commenters raised similar issues. As such, these comments have been grouped according to similar issues, and are addressed in a collective response. ✓

The comments and NRC's responses are as follows:

both industry and NRC, pointing to the NRC's Strategic Performance Goals of reducing unnecessary regulatory burden and achieving greater realism in regulatory decisions. The commenter argued that the NRC should not impose a policy that encourages industry to ignore the best science and instead tell the NRC staff what it wants to hear in order to obtain a waiver of review fees.

The commenter argued that NRC's budget is not enhanced by imposing part 170 fees for services, since whatever is not recovered through part 170 fees will be made up by charging part 171 annual fees. This suggests that there is no budgetary imperative for charging part 170 fees (sought to be relieved by these fee waiver requests), rather than allowing the costs to be absorbed through the imposition of annual fees. In the commenter's words, "granting or denying a waiver is 'revenue neutral,'" ^{for the NRC} however, the commenter stated that fees for services present a serious budgetary problem for industry organizations. According to the commenter, these organizations operate on tight budgets that do not normally cover NRC review fees. Imposition of these fees reduces the amount of research work the commenter's organization can do to support the membership, and slows down efforts on risk informed initiatives.



To address these concerns, the commenter recommended the fee waiver provision be revised so it applies not only to those submittals requested by the NRC, but also to those proposals for generic regulatory improvements submitted by industry organizations representing all licensees, including those which are unsolicited and need NRC review, and are supported by the membership as a generic submittal. The commenter stated it would ensure that its fee waiver requests are reviewed and supported by its members, and that its membership agrees to NRC cost recovery for these reviews through part 171 annual fees.

services provided to identifiable recipients. These are subject to IOAA fees, under applicable caselaw. See, e.g., Mississippi Power & Light Co. v. U.S. Nuclear Regulatory Commission, 601 F. 2d 233 (C.A. 5, 1979), cert. den. 444 U.S. 1102 (1980). Further, the "primary beneficiary" concept is solidly rooted in pertinent caselaw, which authorizes the assessment of fees for specific services/benefits against identifiable beneficiaries, even if the service confers a benefit beyond that, i.e., upon the general public as well. Engine Mfrs. Ass'n v. E.P.A., 20 F. 3d 1177 (C.A.D.C. 1994).

To say that the CFO's rejection of the submitter's stated purpose and the related fee waiver request "makes it difficult for the staff to make an informed decision as to the intended use of the submittal" reverses the proper order of things. The staff must provide technical advice and recommendations to assist the CFO in making the appropriate determination of fee waiver entitlement. The submittal, and thus, potential for fee waiver, is to be weighed on the merits and how it relates to the NRC's regulatory initiatives, from which fee considerations flow, not the other way around. Moreover, while the program staff certainly should be able to communicate freely with the submitter on the technical merits of the submittal, it is appropriate for the program staff to be reluctant to discuss fee matters with the submitter because that is not the program staff's area of expertise. Fee issues and discussions are the responsibility of the CFO's staff, and, therefore, to avoid confusion and misunderstanding, fee matters should be discussed with the CFO's staff instead of the program staff.

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The NRC has consistently declined to base its fees on the financial status of NRC licensees and applicants, except the impacts of the fees on small entities the NRC is required to consider under the provisions of the Regulatory Flexibility Act. Therefore, the NRC does not base fee

the work was completed, if applicable, are printed on the enclosure to the part 170 invoices. Additionally, the inspection report number is provided on inspection fee bills. The work effort codes are the only available data describing the work performed, and they are the lowest level of detail available in HRMS. However, the NRC believes that the summary work descriptions shown on the invoices are sufficient to allow licensees to identify the subject of the NRC's efforts.

For contractor costs billed to uranium recovery licensees under part 170, the NRC includes copies of the contractors' summary cost reports with the invoices. Upon specific request, the NRC will send all available information in support of the bill to any licensee or applicant who does not understand the charges or needs more information in order to understand the bill. This has always been an option available to licensees and applicants who feel they need more information on the costs billed.

The NRC does not plan to develop new systems solely to provide additional information on its fee invoices. Office of Management and Budget Circular A-25, which provides guidelines for Federal agencies to assess fees for Government services, provides that new cost accounting systems do not need to be established solely for the purpose of determining or estimating full cost.

C. Specific Part 171 Issues.

1. ~~Annual Fee Adjustment for Mixed Oxide Fuel (MOX) Contested Hearing Costs~~

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Comment. One nuclear industry group commented that the NRC's proposal to assess MOX contested hearing costs to the fuel facilities class is unfair, and that it is a violation of OBRA-90 to charge licensees for an agency activity or program from which the licensees receive no benefit. In this case, the commenter asserts that fuel facility licensees should not be responsible for bearing the costs of hearings associated with MOX fabrication because this process has no relation to the NRC's regulatory services from which fuel facility licensees obtain a benefit. Specifically, the MOX program is a Federal government initiative to ensure national security through the disposition of plutonium stockpiles. The commenter further adds that the beneficiaries of the MOX program are the Federal government and the nation's citizenry because it will aid in the reduction of weapons-grade plutonium. As such, the commenter alludes that commercial fuel cycle facility licensees should not have to subsidize the Federal government's efforts to ensure national security, and that such costs should be appropriated through the General Fund.

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Response. The NRC has a longstanding policy of not charging part 170 fees for contested hearings. These costs are recovered through part 171 annual fees which are assessed to the affected class of licensee. This policy has been reconfirmed in the statement of considerations and in responses to comments received from the public during many past fee rulemakings, court pleadings, and in an NRC report to Congress on fees. However, in the case of the MOX contested hearing costs, the NRC agrees that the fuel facility licensees should not be required to pay for this national security related proceeding. Specifically, the MOX program is a Federal government directed national security initiative involving the disposition of plutonium stockpiles. Thus, the Commission believes that the costs of the MOX contested hearing are more appropriately treated as part 170 fees billed to the applicant because of the specific focus of the

In this rulemaking, the Commission has adopted the proposed revised methodology for allocating uranium recovery budgeted costs. Moreover, the FY 2002 annual fees reflect the

Office of Nuclear Material Safety and Safeguard's revised policy for assigning PMs.

As discussed in the response to comment Q10, above, the final FY 2002 fees for the uranium recovery class include a proportionate share of the FY 2002 budgeted costs to the NRC contested hearing. This results in an increase in the FY 2002 annual fees for the uranium recovery class from the proposed rule.

4. Annual Fees for Power Reactor Licensees

Comment. Three commenters addressed the proposed annual fees for the power reactor class. Two of these commenters agreed with the NRC's policy, clarified in the proposed fee rule, of charging annual fees on a per license basis, and not on a reactor-unit basis. However, according to one of the commenters on this issue, this approach would not be equitable if the NRC assesses two separate annual fees to a dual unit standard reactor facility, such as those certified under part 52, Appendix C, if the sum of these fees exceeded the annual fee charged to multi-unit reactor modular facilities, providing these modular facilities had a single license. The other commenter on this subject asserts the NRC should make it clear in the FY 2002 final rule that the agency's underlying intent is to assess multi-unit reactor modular facilities a single annual fee, regardless of whether the licensee holds a single or multiple combined operating license(s). One commenter stated the industry objects to the NRC's approach of allocating generic costs through part 171, indicating that the power reactor class of licensees bear a large share of the annual fee burden.

Response. In the proposed fee rule, the NRC stated its intent to revise §171.15(a) to clarify that annual fees are assessed on a per license basis, and not for each reactor unit. The NRC reiterates that this clarification is not a change to its existing policy of charging annual fees for

each license. Furthermore, the NRC is not proposing a specific annual fee category or amount for part 52 combined licenses because there are no such existing licenses at this time. The NRC's intent when proposing these revisions was to make potential applicants for part 52 combined licenses aware that they would be subject to annual fees. At this time, the NRC does not have the information required to make a decision with respect to assessing annual fees for part 52 combined licenses for multi-unit modular reactors. In the future, when the NRC determines its fee structure for part 52 combined licenses, the fees will be assessed in a fair and equitable manner, and to the maximum extent practicable, will reflect a reasonable relationship to the cost of the regulatory services provided.

The part 171 power reactor annual fees are established to recover the costs for generic activities related to power reactors such as rulemakings and guidance development, as well as costs for other activities for the class not recovered through part 170 fees (e.g., allegations, contested hearings, special projects for which fee waivers are granted, orders issued under 10 CFR 2.202 or responses to such orders, etc.). The annual fees for each class also includes a share of the total surcharge costs to be recovered through annual fees assessed to NRC licensees, as well as any cost adjustments for generic/other activities not attributable to a specific class of licensees. The surcharge is established to recover the costs for NRC activities that are not attributable to an existing NRC licensee or class of licensee, activities that are exempt from part 170 fees based on law or Commission policy, and those activities that support NRC operating licensees and others. The surcharge is required in order for NRC to meet the statutory requirement of OBRA-90, as amended, that almost all of NRC's budget be recovered through IOAA and annual fees. To address fairness and equity concerns raised by NRC related to charging NRC license holders for these expenses that do not directly benefit them, the FY

The final FY2002 annual fees for power reactors include a prorated share of the NRC's budgeted costs of the contested hearings as explained in the response to comment 1. Above, the first amount was for the contested hearings to operate and more than the proposed annual fees.

additional financial strains on the company. Finally, the commenter indicated that the costs incurred by the company as a result of NRC fees and security requirements will significantly impact the viability of the facility.

Response. The NRC has addressed similar issues from other commenters regarding the impact of fees on industry, both in this fee rule and in previous years' fee rules. As earlier stated, consistent with the requirements of OBRA-90, as amended, the NRC must collect most of its budgeted costs through assessment of fees. These budgeted costs are the resources necessary for the NRC to execute its regulatory oversight of the various licensee classes. The NRC determined the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned accomplishment in each of the agency's major program areas. The annual fees for the various categories of licensees in the fuel facility class are based on the budgeted costs that must be recovered from the class to meet the requirements of OBRA-90, as amended. Although this may create a financial hardship for some licensees, a reduction in the fees assessed to one class or category of licensees would require a corresponding increase in the fees assessed to other licensees. Consequently, the NRC has not based its fees on licensees' economic status, market conditions, or the ability of licensees to pass through the costs to its customers.

The final annual fees for the fuel facility class, including the uranium hexafluoride conversion category, have been adjusted to reflect the Commission's decision that for FY 2002, budgeted costs for the most contested hearing be spread to all classes of licensees in their annual fees. As a result of this change, the final FY 2002 annual fees for the fuel facility licensees are less than the proposed annual fees. The FY 2002 annual fee for the uranium hexafluoride conversion category is \$55,000, which is \$3,500 less than the proposed fee of \$58,500.

C. Other Issues.

1. NRC Budget

In the proposed fee rule, all of these costs were included in the fee for uranium hexafluoride conversion.

Inspector General, less the appropriations received from the NWF and the General Fund. The NRC's total budget authority for FY 2002 is \$559.1 million, of which approximately \$23.7 million has been appropriated from the NWF. In addition, \$36.0 million has been appropriated from the General Fund for activities related to homeland security. Based on the 96 percent fee recovery requirement, the NRC must collect approximately \$479.5 million in FY 2002 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2002 is ~~\$28.1~~ million more than the amount estimated for recovery in FY 2001.

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The FY 2002 fee recovery amount is reduced by a \$1.7 million carryover from additional collections in FY 2001 that were unanticipated at the time the final FY 2001 fee rule was published. This leaves approximately \$477.8 million to be recovered in FY 2002 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately \$124.0 million will be recovered in FY 2002 from part 170 fees and other offsetting receipts. For FY 2002, the NRC also estimates a net adjustment of approximately \$8.2 million for FY 2002 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2002 for FY 2001 invoices. The remaining \$345.6 million will be recovered through the part 171 annual fees, compared to \$331.6 million for FY 2001.

Table I summarizes the budget and fee recovery amounts for FY 2002. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE I - BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2002

[Dollars in Millions]

Total Budget Authority	\$559.1 ✓
Less NWF	- 23.6 ? 23.7
Less General Fund	- 36.0 ✓
Balance	\$499.5 ✓
Fee Recovery Rate for FY 2002	x 96.0% ✓
Total Amount to be Recovered For FY 2002	\$479.5 ✓
Less Carryover from FY 2001	- 1.7 ✓
Amount to be Recovered Through Fees and Other Receipts	\$477.8 ✓
Less Estimated Part 170 Fees and Other Receipts	- 124.0 ✓
Part 171 Fee Collections Required	\$353.8 ✓
Part 171 Billing Adjustments	
Unpaid FY 2002 Invoices (estimated)	2.9 ✓
Less Payments Received in FY 2002 for Prior Year Invoices (estimated)	- 11.1 ✓
Subtotal	- 8.2 ✓
Adjusted Part 171 Collections Required	\$345.6 ✓

The FY 2002 final fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2002 will become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2002 final rule. For these licensees, payment will be due on the effective

date of the FY 2002 rule. Those materials licensees whose license anniversary date during FY 2002 falls before the effective date of the final FY 2002 rule will be billed for the annual fee during the anniversary month of the license at the FY 2001 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2002 rule will be billed for the annual fee at the FY 2002 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

The Commission made an exception to policy with regard to how it will recover costs for the MOX contested hearing as discussed in the preceding statement of considerations. These costs will be treated as a fee adjustment and assessed to all classes of licensees based on their respective percentages of the NRC's budget.

As noted in the FY 2002 proposed fee rule, the National Mining Association (NMA) filed a petition requesting the commencement of a rulemaking proceeding which would result in a modification of the existing fee schedules to waive all fees for commercial uranium recovery licensees. Alternatively, the NMA requested the waiver of fees associated with a contemplated rulemaking that would establish requirements for licensing uranium and thorium facilities. The NRC published the NMA's petition in the Federal Register for public comment (66 FR 55604; November 2, 2001). Because fees would increase for other licensees should the Commission grant the petition, the NRC invited those that had arguments to place before the Commission that were not submitted in response to the November 2, 2001, Federal Register document to do so during the comment period for the FY 2002 proposed fee rule. ~~The Commission is currently evaluating the public comments received, and plans to make a decision on the NMA petition in the near future.~~ After careful evaluation of NMA's request and all comments received, the Commission has decided to deny the NMA petition. ~~The Commission's decision~~ Additional detail

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on this petition and the Commission's denial will be published in ~~a forthcoming issue of the~~
the Federal Register in the near future,

In accordance with its FY 1998 announcement, the NRC has discontinued mailing the final rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2002 final rule or future final fee rules to licensees. However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301-415-7554, or e-mail us at fees@nrc.gov. In addition to publication in the Federal Register, the final rule will be available on the Internet at <http://ruleforum.llnl.gov> for at least 90 days after the effective date of the final rule.

The NRC is amending 10 CFR Parts 170 and 171 as discussed in Sections A and B below.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, As Amended.

The NRC is revising the hourly rates used to calculate fees and is adjusting the part 170 fees based on the revised hourly rates. Additionally, the NRC is revising part 170 to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related Greater than Class C (GTCC) waste under part 72, and to clarify the fee waiver provisions for special projects, including topical reports.

The amendments are as follows:

In summary, the NRC is amending 10 CFR Part 170 to --

1. Revise the materials and reactor program FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the revised hourly rates;
1. Revise fee category 1.B. of § 170.31 to clarify that full cost fees will be assessed for amendments and inspections related to the storage of GTCC Waste under part 72; and
2. Add to §170.11, Exemptions, the fee waiver provisions that are currently in Footnote 4 to §170.21 and Footnote 5 to §170.31, and clarify the fee waiver provisions currently in criterion (c) of these Footnotes. These Footnotes, as well as material in the definition of *Special Projects* in §170.3 related to certain special requests and reports submitted to NRC for review, have been deleted.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC.

The NRC is revising the annual fees for FY 2002, amending part 171 to specifically cover combined licenses issued under part 52, clarifying the annual fee exemption provision for reactors, and modifying the methodology for allocating the uranium recovery annual fee amount among the types of uranium recovery licenses. In addition, the Commission made an exception to policy with regard to how it will recover costs for the MOX contested hearing as discussed in

As explained in response to comment C.1)
the final FY2002 annual fees reflect the Commission's decision that the FY2002 budgeted costs for the MOX contested hearing should be spread among all licensees in FY2002. This is being changed only to the

ability class of licenses. Accordingly,
~~the preceding statement of considerations.~~ *have been* These costs will be treated as a fee adjustment and assessed to all classes of licensees based on their respective percentages of the NRC's budget.

The amendments are as follows.

1. Annual Fees

The NRC is establishing rebaselined annual fees for FY 2002. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), establishes that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licenses. The fees were last rebaselined in FY 2001. Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees will result in increased annual fees for all classes of licenses, except for the non-power reactor and spent fuel storage/reactor decommissioning classes, which will have annual fee decreases.

The annual fees in §§171.15 and 171.16 are revised for FY 2002 to recover approximately 96 percent of the NRC's FY 2002 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 2002 is \$345.6 million, compared to \$331.6 million for FY 2001. ✓

The FY 2002 annual fees reflect an increase for most categories of licenses and decrease for others from the previous year. The increases in annual fees range from approximately 4.9 percent for the power reactor class to approximately 129 percent for rare earth facilities. The decreases in annual fees range from approximately 3.5 percent for non-power reactors, to approximately 17 percent for the Title II uranium recovery specific licenses. The final FY 2002 annual fees for the operating reactor and fuel facility classes, and for certain categories of materials users are less than the proposed annual fees based on the revised estimates for part 170 collections for FY 2002. In addition, the fuel facility class' annual fees were further reduced by \$433,000 for the costs associated with the MOX contested hearing. These costs were reallocated to all classes of licensees and assessed in their annual fees.

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Factors affecting the changes to the annual fee amounts from FY 2001 include changes in budgeted costs for the different classes of licenses, the reduction in the fee recovery rate from 98 percent for FY 2001 to 96 percent for FY 2002, the estimated part 170 collections for the various classes of licenses, a \$1.7 million carryover from additional collections in FY 2001 that were unanticipated at the time the final FY 2001 fee rule was published (compared to a \$3.1 million carryover from FY 2000 which reduced FY 2001 annual fees), the increased hourly rates, and decreases in the numbers of licensees for certain categories of licenses. In addition, the decreases for the Title II uranium recovery specific licenses are based on a change to the methodology for allocating the annual fee amount for the uranium recovery class among Title I and Title II licenses. This change is described in detail in section B below.

In addition, for some classes of materials licenses, a change in policy for assigning Project Managers (PMs) has contributed to the annual fee increases. In the last few years, part 170 fees have increased for certain classes of licenses due to initiatives to recover costs for

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The final FY 2002 annual fees reflect revised estimates for part 170 collections for FY 2002. The final annual fees have also been adjusted to reflect the Commission's decision that, for FY 2002 only, the budgeted costs for the MOX contested hearing should be spread to all classes of licensees in their annual fees. For the proposed rule, these costs were spread only to the fuel facility class. As a result of this change, the final annual fees have decreased from the proposed annual fees for the fuel facility class, but have increased for the operating power reactor, non-power reactor, uranium recovery and rare earth classes, and for certain categories of licenses in the materials users and transportation classes.

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Total annual fee amount	<u>.09 million</u>	<u>.21 million</u> ✓	<u>+.12 million</u>
Total	\$.90 million	\$.71 million ✓	\$-.19 million

Table IV below shows the rebaselined annual fees for FY 2002 for representative categories of licenses.

TABLE IV - REBASELINED ANNUAL FEES FOR FY 2002

<u>Class/category of licenses</u>	<u>FY 2002</u> <u>Annual fee</u>
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	\$2,610,000 <i>\$2,849,000</i>
Spent Fuel Storage/Reactor Decommissioning	239,000 ✓
Nonpower Reactors	71,400 ✓
High Enriched Uranium Fuel Facility	3,834,000 ✓
Low Enriched Uranium Fuel Facility	1,286,000 ✓
UF ₆ Conversion Facility	551,000 ✓
Uranium Mills	77,900 ✓
Transportation:	
Users/Fabricators	72,900 ✓
Users Only	7,300 ✓
Typical Materials Users:	
Radiographers	13,700 ✓
Well Loggers	10,000 ✓

(c) An exemption for reactors licensed to operate under this provision may be granted by the Commission taking into consideration each of the following factors:

- (1) Age of the reactor;
- (2) Size of the reactor;
- (3) Number of customers in rate base;
- (4) Net increase in KWh cost for each customer directly related to the annual fee assessed under this part; and
- (5) Any other relevant matter which the licensee believes justifies the reduction of the annual fee.

* * * * *

11. Section 171.15 is revised to read as follows:

§171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

(a) Each person licensed to operate a power, test, or research reactor; each person holding a part 50 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel on-site; and each person holding a part 72 license who does not hold a part 50 license shall pay the annual fee for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under §171.11(a).

(b)(1) The FY 2002 annual fee for power reactors licensed to operate is ^{2,849,000}~~\$2,845,000~~.

(2) The FY 2002 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2002 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 2002 surcharge are shown in paragraph (d)(1) of

calculated by dividing the total operating power reactor surcharge (\$35.3 million) by the number of power reactors licensed to operate (104).

(3) The FY 2002 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is approximately \$3.3 million. The FY 2002 spent fuel storage/reactor decommissioning surcharge to be assessed to each power reactor licensed to operate, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is \$27,300. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses (except those that permanently ceased operations and have no fuel on site) and part 72 licensees who do not hold a part 50 license.

(e) The FY 2002 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under §171.11(a), are as follows:

Research reactor	\$71,300 71,400
Test reactor	\$71,300 71,400

12. In §171.16, paragraphs (c), (d), and (e) are revised to read as follows:

§171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

B. General licenses for storage of spent fuel under 10 CFR 72.210		N/A ¹²
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter		N/A ⁷
15. Import and Export licenses		N/A ⁸
16. Reciprocity		N/A ⁸
17. Master materials licenses of broad scope issued to Government agencies		\$283,000 ✓
18. Department of Energy:		
A. Certificates of Compliance		\$1,370,000 ¹⁰
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	if > \$1,000,000 (Round to nearest thousand)	1,058,000 \$1,057,900 ✓

¹ Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 2001, and permanently ceased licensed